

1 KAREN P. HEWITT
United States Attorney
2 RAVEN M. NORRIS
Assistant U.S. Attorney
3 California State Bar No. 232868
CAROLINE J. CLARK
4 Assistant U.S. Attorney
California State Bar No. 220000
5 United States Attorney's Office
880 Front Street, Room 6293
6 San Diego, California 92101-8893
Telephone: (619) 557-7157/7491
7 Facsimile: (619) 557-5004

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 SUI HUAN CAO,) Case No. 08cv0511-DMS (BLM)

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Petitioner,

v.

MICHAEL CHERTOFF, Secretary of the
Department of Homeland Security;
MICHAEL MUKASEY, Attorney General;
ROBIN F. BAKER, Director of San Diego
Field Office; U.S. Immigration and
Customs Enforcement; JOHN A.
GARZON, Officer-in-Charge,

Respondents.)

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GOVERNMENT'S RETURN IN OPPOSITION
TO PETITION FOR WRIT OF HABEAS
CORPUS

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10 SOUTHERN DISTRICT OF CALIFORNIA

11 SUI HUAN CAO,) Case No. 08cv0511-DMS (BLM)

12)
Petitioner,)

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v.)

EXHIBIT A

14 MICHAEL CHERTOFF, Secretary of the)
Department of Homeland Security; MICHAEL)
15 MUKASEY, Attorney General; ROBIN F.)
BAKER, Director of San Diego Field Office;)
16 U.S. Immigration and Customs Enforcement;)
JOHN A. GARZON, Officer-in-Charge,)

17)
Respondents)
18)

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27 EXHIBIT A
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U.S. Department of Justice
Immigration and Naturalization Service

Order to Show Cause and Notice of Hearing

ORDER TO SHOW CAUSE AND NOTICE OF HEARING
(ORDEN DE PRESENTAR MOTIVOS JUSTIFICANTES Y AVISO DE AUDIENCIA)

In Deportation Proceedings under section 242 of the Immigration and Nationality Act.
(En los trámites de deportación a tenor de la sección 242 de la Ley de Inmigración y Nacionalidad.)

United States of America:
(Estados Unidos de América:)

File No. A38-494-552
A38 494 552
(No. de registro)

Dated APR 30 1993
(Fecha)

In the matter of
(En el asunto de)
Address
(Dirección)

CAO, Sui Huan aka: TSO, Steven

(Respondent)
(Demandado)

c/o Superintendent, Woodbourne Correctional Facility

Riverside Drive, Woodbourne, NY 12788

Telephone No. (Area Code)
(No. de teléfono y código de área)

Upon inquiry conducted by the Immigration and Naturalization Service, it is alleged that:
(Según las indagaciones realizadas por el Servicio de Inmigración y Naturalización, se alega que:)

- 1) You are not a citizen or national of the United States;
(Ud. no es ciudadano o nacional de los Estados Unidos)
- 2) You are a native of People's Republic of China and a citizen of People's Republic of China ;
(Ud. es nativo de) (People's Republic of China) (y ciudadano de) (People's Republic of China)
- 3) You entered the United States at or near New York, New York on or about December 23, 1983 ;
(Ud. entró a los Estados Unidos en o cerca de) (el día o hacia esa fecha)
(Nueva York, Nueva York) (23 de Diciembre, 1983)

4. At that time you entered as a Lawful Permanent Resident

(En ese momento, usted entro como un Residente Permanente Legal);

5. You were, on February 5, 1990, convicted in the Supreme Court of the State of New York, County of Queens, of Attempted Robbery in the second degree, in violation of Section 110/160.10 of the New York State Penal Law;

(Ud. resulto convicto, el 5 de Febrero de 1990, en el Tribunal Supremo del Estado de Nueva York, Condado de Queens, de Robo en el segundo grado, en violación de la Sección 110/160.10 del Código Penal del Estado de Nueva York);

See Attachment page for Additional Allegations
(Vea pagina adjunta con alegatos adicionales)

Continuation Page for Form

Alien's Name

CAO, Sui Huan

File Number

A38 494 552

Date

APR 30 1993

AKA: CAO, Sui Huan

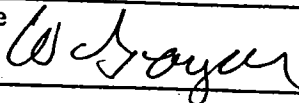
6. You were, on August 7, 1990, convicted in the Supreme Court of the State of New York, County of New York, of Robbery in the first degree, in violation of Section 160.15 of the New York State Penal Law;

(Ud. resultado convicto, el 7 de Agosto de 1990, en el Tribunal Supremo del Estado de Nueva York, Condado de Nueva York, del Robo en el primero grado, en violación de la Sección 160.15 del Código Penal del Estado de Nueva York);

7. The crimes did not arise out of a single scheme of criminal misconduct.

(Estos delitos no provienen del mismo esquema de conducta delictiva).

Signature



Title Deputy Assistant District Director
for Investigations

U.S. Department of Justice
Immigration and Naturalization Service

Order to Show Cause and Notice of Hearing

Continuation Sheet
(Hoja complementaria)Dated APR 30 1993

(Fechada)

File No. A38 494 552

(No. de registro)

Respondent CAO, Sui Huan
(Demandado) akas: Tso, Steven Tlo, Steven
Tao, Steven

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

(Y según los alegatos anteriores, se le acusa de estar sujeto a deportación de acuerdo con la(s) siguiente(s) disposición(es) de la ley:)

Section 241(a)(2)(A)(ii) of the Immigration and Nationality Act (Act), as amended, in that, at any time after entry, you have been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct.

(Sección 241(a)(2)(A)(ii) de la Ley de Inmigración y Nacionalidad (INA), según enmendada, en que, en algún momento después de su entrada, Ud. ha resultado convicto de dos delitos referentes a bajeza moral que no provienen de un mismo esquema sencillo de conducta delictiva).

WHEREFORE, YOU ARE ORDERED to appear for a hearing before an Immigration Judge of the Executive Office for Immigration Review of the United States Department of Justice at:

(POR LO CUAL, SE LE ORDENA comparecer ante un juez de inmigración de la Oficina Ejecutiva de Revisión de Inmigración del Departamento de Justicia de los Estados Unidos en:)

Address NOTICE WILL BE MAILED TO THE ADDRESS PROVIDED BY THE RESPONDENT.
(Dirección) (La Oficina del juez de inmigración enviara un aviso a la dirección facilitada .m.
On por el demandado con la fecha de la audiencia) At _____
(Fecha) (Hora)

and show cause why you should not be deported from the United States on the charge(s) set forth above.
(y mostrar motivos justificantes por cual no debería ser deportado de los Estados Unidos por los cargos expresados anteriormente.)

APR 30 1993Dated _____
(Fechada)Signature of Issuing Officer 
(Firma del funcionario que la expide)City and State of Issuance New York, New York
(Ciudad y Estado donde se expide)Deputy Assistant District Director
for Investigations
Title of Issuing Officer _____
(Título del funcionario que la expide)LANGUAGE: Spanish
EPR Date: 12/93

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U.S. Department of Justice
Immigration and Naturalization Service

Continuation Page for Form I-221

Alien's Name CAO, Sui Huan	File Number A38 494 552	Date APR 30 1993
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ATTACHMENT A

Your Order to Show Cause is not being filed with the Office of the Immigration Judge at this time. At the time the Order to Show Cause is filed, you will be notified of the street address, city, state and zip code of the Office of the Immigration Judge having jurisdiction over your case.

(En este momento, su Orden de Presentar Motivos Justificantes no esta registrada en la Oficina del Juez de Inmigración. Cuando la Orden de Presentar Motivos Justificantes se registre, se le notificara a Ud. la dirección, ciudad, estado y código postal de la Oficina del Juez de Inmigración que tiene jurisdicción sobre su caso.)

Until you receive notification that your Order to Show Cause has been filed, you should direct all correspondence in your case and report any changes in your address, including zip code and telephone number, to the:

(Hasta que Ud. reciba la notificación de que su Orden de Presentar Motivos Justificantes ha sido registrada, Ud. deberá dirigir toda la correspondencia sobre su caso e informar cualquier cambio de dirección, incluyendo el código postal y el número telefónico, a:)

U. S. Immigration and Naturalization Service
26 Federal Plaza
New York, New York 10278

Attn: ADD/DDP

After you receive notification that your Order to Show Cause has been filed, you should direct all correspondence in your case and report any changes in your address, including zip code and telephone number, to the Office of the Immigration Judge having jurisdiction over your case.

(Luego de que Ud. reciba la notificación de que su Orden de Presentar Motivos Justificantes ha sido registrada, Ud. deberá dirigir toda la correspondencia sobre su caso e informar cualquier cambio de dirección, incluyendo código postal y número telefónico, a la Oficina del Juez de Inmigración que tenga jurisdicción sobre su caso.)

Signature 	Title Deputy Assistant District Director for Investigations
--	---

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of Pages

This Order to Show Cause shall be filed with the Immigration Judge of the Executive Office for Immigration Review at the address provided below. You must report any changes of your address or telephone number in writing to this office:

Debe presentar esta Orden de Presentar Motivos Justificantes a la Oficina Ejecutiva de Revisión de Inmigración en la siguiente dirección. Debe notificar cualquier cambio de su domicilio o número de teléfono por escrito a:

The Office of the Immigration Judge

26 Federal Plaza, Room 13-130

New York, NY 10278

Certificate of Translation and Oral Notice

This Order to Show Cause ☐ was ☐ was not read to the named alien in the _____ language, which is his/her native language or a language which he/she understands.

Date _____ Signature _____ Printed Name and Title of Translator _____

Address of Translator (If other than INS employee) or office location and division (if INS employee) _____

(If oral notice was not provided please explain) _____

Manner of Service	Alien's Right Thumb Print
<input type="checkbox"/> Personal Service to Alien <input checked="" type="checkbox"/> Certified Mail - Return Receipt Requested <input checked="" type="checkbox"/> Alien <input type="checkbox"/> Counsel of Record	

Certificate of Service

This Order to Show Cause was served by me at 26 Federal Plaza on May 11, 1993 at 7:30 A m. 19__

Officer's Signature Gary Unger Printed Name Gary Unger Title S/A Office N-7.c

Alien's Signature (acknowledgment/receipt of this form)
(Firma de extranjero/acuse de recibo)

Request for Prompt Hearing and Waiver of 14-Day Minimum Period
(Solicitud de audiencia inmediata y renuncia al plazo mínimo de 14 días)

To expedite determination of my case, I request an immediate hearing, and waive my right to the 14 day notice.
(Para agilizar la decisión sobre mi caso, solicito una audiencia inmediata y renuncio a mi derecho a un plazo mínimo de 14 días.)

Signature of Respondent
(Firma de demandado)

Date
(Fecha)

018

1 KAREN P. HEWITT
United States Attorney
2 RAVEN M. NORRIS
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8 Attorneys for Respondents

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SUI HUAN CAO,) Case No. 08cv0511-DMS (BLM)

12)
Petitioner,)

13)
v.)

EXHIBIT B

14 MICHAEL CHERTOFF, Secretary of the)
Department of Homeland Security; MICHAEL)
15 MUKASEY, Attorney General; ROBIN F.)
BAKER, Director of San Diego Field Office;)
16 U.S. Immigration and Customs Enforcement;)
JOHN A. GARZON, Officer-in-Charge,)

17)
Respondents)
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EXHIBIT B

CAO, Sui Huan aka:TSO, Steven

A38 494 554

Name
(Nombre)

File Number
(Número del Registro)

NOTIFICATION TO ALIEN OF CONDITIONS OF RELEASE OR DETENTION
(AVISO AL EXTRANJERO SOBRE LAS CONDICIONES DE SU
DETENCION O PUESTA EN LIBERTAD)

Pursuant to the authority of Part 242.2, Title 8, Code of Federal Regulations, an authorized officer has determined that, pending a final determination of deportability in your case, and, in the event you are ordered deported, until your departure from the United States is effected, but not to exceed six months (except in the case of an alien convicted of an aggravated felony) from the date of the final order of deportation under administrative processes, or from the date of the final order of the court if judicial review is had, you shall be:

De acuerdo con lo dispuesto en la Parte 242.2 del Título 8, Código de Reglamentos Federales, un funcionario autorizado ha decidido que, mientras se llega a una decisión definitiva con respecto a su deportación y, en el caso de que se ordene la misma, hasta que tenga lugar su salida de los Estados Unidos, pero que no exceda más de seis meses (salvo en el caso de un extranjero condenado por un delito grave con agravantes) después de la fecha de la orden definitiva de deportación por trámites administrativos, o a partir de la fecha definitiva de la orden del tribunal, de haber revisión judicial, Usted sea:

☐ Detained in the custody of this Service
(Detenido bajo la custodia del Servicio)

☐ Released on an Order of Recognizance (Form I-220A)
(Puesto en libertad en virtud de una Orden de Obligación de Comparecer).
(Formulario I-220A)

☒ Released under bond in the amount of
(Puesto en libertad bajo fianza por la cantidad de)

\$ 39,000

You may accept this custody determination or you may request a redetermination by an immigration judge.
(Usted puede aceptar esta decisión de custodia o solicitar que el juez de inmigración tome otra decisión).

I do ☒ do not ☐ request redetermination of the custody decision by an immigration judge.
(Solicito ☒ (no solicito) (que el juez de inmigración determine de nuevo acerca de esta decisión de custodia).)

Signature of respondent
(Firma del demandado)

Date
(Fecha)

CERTIFICATE OF SERVICE

Served at 2. Vanier Blvd on 4/4, 19 94 at 2:35 a.m./p.m.

Signature of Officer/Employee

Title of Officer/Employee

RESULT OF CUSTODY REDETERMINATION

On 4/4, 19 94, custody status/conditions for release were reconsidered by:

☐ Immigration Judge (EOIR) ☐ District Director ☐ Board of Immigration Appeals

The results of the redetermination/reconsideration are:

☐ No Change-Original determination upheld. ☐ Release-Order of Recognizance (I-220A)

☐ Detain in custody of this Service ☐ Release-Personal Recognizance

☐ Bond amount reset to \$ ☐ Other:

(V. A. I. R. O. V. O. C. E. R. O. V. D. E. F. O. R. D. E. T. E. N. C. I. O. N. E. S.)
NOTICE OF RIGHTS Signature/Title

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8 Attorneys for Respondents

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SUI HUAN CAO,) Case No. 08cv0511-DMS (BLM)
12)
Petitioner,)
13)
v.)
14) EXHIBIT C
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Department of Homeland Security; MICHAEL)
15 MUKASEY, Attorney General; ROBIN F.)
BAKER, Director of San Diego Field Office;)
16 U.S. Immigration and Customs Enforcement;)
JOHN A. GARZON, Officer-in-Charge,)
17)
Respondents)
18)

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27 EXHIBIT C
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U.S. Department of Justice
Executive Office for Immigration Review
Office of the Immigration Judge

File A 38 494 154

In the Matter of

Order of the
Immigration Judge
with Respect to Custody

Arri Ham Co HKA
Steven TEO
Respondent.

Request having been made for a change in the custody status of the respondent pursuant to 8 CFR 242.2(b), and (c), and full consideration having been given by me to the representations of the Immigration and Naturalization Service and of the respondent in the premises, it is hereby

☐ ORDERED that the request for a change in the custody status of the respondent be denied.

☒ ORDERED that the request be granted and that respondent be:

☐ released from custody on his own recognizance

☒ released from custody under bond of \$ 15,000⁰⁰ *(Fifteen Thousand Dollars)*

It is further ordered that the conditions of the bond

☐ remain unchanged

☐ be changed as follows: _____

Copy of this decision has been served on the respondent and the Immigration and Naturalization Service.

Appeal: ~~Waived~~ reserved *by resp to 4/18/94*

Date: 4/6/94

Place: Varadero (HRC)

Alfred Page
(Immigration Judge)

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11 SUI HUAN CAO,) Case No. 08cv0511-DMS (BLM)

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13 v.)

EXHIBIT D

14 MICHAEL CHERTOFF, Secretary of the)
Department of Homeland Security; MICHAEL)
15 MUKASEY, Attorney General; ROBIN F.)
BAKER, Director of San Diego Field Office;)
16 U.S. Immigration and Customs Enforcement;)
JOHN A. GARZON, Officer-in-Charge,)

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Respondents)
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27 EXHIBIT D
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 5 United States Attorney=s Office
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 Telephone: (619) 557-7157/7491
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8 Attorneys for Defendants

9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

11 SUIHUAN CAO,)	
)	Case No. 08cv0511-DMS (BLM)
12 Petitioner,)	
)	
13 v.)	DECLARATION OF MIGUEL CORONADO
)	
14 MICHAEL CHERTOFF, Secretary of the)	
Department of Homeland Security;)	
15 MICHAEL MUKASEY, Attorney General;)	
ROBIN F. BAKER, Director of San Diego)	
16 Field Office; U.S. Immigration and Customs)	
Enforcement; JOHN A. GARZON, Officer-)	
17 in-Charge,)	
)	
18 Respondents.)	
)	
19 _____)	
_____)	

20 DECLARATION OF MIGUEL CORONADO

21 I, Miguel Coronado, do hereby declare and say:

22 1. I am employed by the U.S. Department of Homeland Security (DHS), Immigration and
 23 Customs Enforcement (ICE), in the San Diego Field Office, as a Deportation Officer. I have held
 24 this position since April 29, 2007. Prior to this position, I was an Immigration Enforcement Agent
 25 for ICE, and before its existence, a Detention Enforcement Officer with the Immigration and
 26 Naturalization Service (INS) since February 25, 2001. Prior to that I was an Immigration Inspector
 27 for the INS since May 17, 1996.

1 2. I am a Deportation Officer in the Removal Unit, and my responsibilities include enforcing
2 final orders of deportation and removal from the United States for all aliens other than Mexicans. I
3 obtain travel documents from foreign consulates and embassies as part of the removal process. I am
4 familiar with the repatriation of Chinese nationals.

5 3. I make this declaration based upon personal knowledge, review of Petitioner Sui Huan
6 Cao's alien file (A-file 38 494 554), and review of official documents and records maintained by
7 ICE.

8 4. On March 29, 1994, Petitioner was taken into INS custody pursuant to the initiation of
9 deportation proceedings against him. On April 4, 1994, INS set a bond of \$30,000, for Petitioner's
10 release pending the final outcome of his deportation proceedings. On April 6, 1994, an Immigration
11 Judge, lowered the bond to \$15,000. On April 7, 1994, Petitioner was released from INS custody
12 after International Fidelity Insurance Company posted the \$15,000 bond.

13 5. On October 02, 1995 the Immigration Judge ordered the Petitioner deported from the
14 United States. The Petitioner appealed the decision on October 11, 1995.

15 6. On March 24, 1997, Petitioner's order of deportation became final after the Board of
16 Immigration Appeals dismissed his appeal.

17 7. On July 02, 1999, INS notified International Fidelity Insurance Company, that, pursuant
18 to the terms of the bond it posted for Petitioner, they must surrender Petitioner to INS custody on
19 August 6, 1999. Petitioner did not appear on August 6, 1999, or thereafter.

20 8. On June 05, 2007, ICE officers located Petitioner in Philadelphia, Pennsylvania, and
21 detained him subject to the outstanding final order of deportation. On July 24, 2007, Petitioner was
22 moved to ICE custody in San Pedro, California. On July 24, 2007, Petitioner was provided with
23 instructions regarding his obligation to assist in obtaining travel documents, Form I-229. On August
24 31, 2007, Petitioner was moved to the ICE detention facility in Otay Mesa, California, where he is
25 currently detained.

26 9. Between October 22, 2007 and November 28, 2007, my office received Petitioner's A-
27

1 file. On November 28, 2007, ICE sent a request for travel documents to the Chinese Consulate in
2 Los Angeles, California. On December 21, 2007, Petitioner was given a Post Custody Order Review
3 Worksheet.

4 10. On January 07, 2008 Petitioner returned his Post Custody Order Review Worksheet and
5 was served another Form I-229.

6 11. On January 14, 2007, I conducted a Post Order Custody Review for Petitioner. After
7 thorough review, I recommended that Petitioner remain in custody due to his violent criminal
8 history, finding that he was a threat to the community. I also considered that he had been a fugitive
9 from deportation for over ten years when ICE officers encountered him. On January 23, 2008, ICE
10 issued a Decision to Continue Detention, noting Petitioner's criminal history and disregard for law.

11 12. On February 01 and 19, 2008, ICE sent the Chinese Consulate requests, via voice mail
12 and faxed letters, concerning the status of issuing a travel document to Petitioner. On February 19,
13 2008, my office sent a memorandum to ICE Headquarters in Washington, D.C., requesting
14 assistance in obtaining Petitioner's travel documents.

15 13. On February 20, 2008, Petitioner was interviewed telephonically by an official from the
16 Chinese Consulate in Los Angeles. After the interview, the consular official informed my office that
17 Petitioner stated his attorney was going to try to reopen his immigration case. The consular official
18 stated they did not want to issue travel documents if Petitioner was going to reopen his immigration
19 case and requested we contact Petitioner's attorney, Janet Tung. Once issued, travel documents
20 from China are only valid for three months.

21 14. On February 22, 2008, my office left a voice message with attorney Tung requesting a
22 return call at her earliest convenience.

23 15. On February 25, 2008, my office received a phone call from attorney Tung, who
24 requested information pertaining to Petitioner's detention. She stated that she was Petitioner's
25 attorney and that she was not planning on filing a motion to reopen in Petitioner's case. My office
26 requested attorney Tung provide us with a Notice of Appearance as Attorney or Representative
27

1 (Form G-28) in order for ICE to release any information to her pertaining to Petitioner. To date,
2 attorney Tung has not submitted a Form G-28.

3 16. On February 26, 2008, my office spoke with the official from the Chinese Consulate
4 who interviewed Petitioner and explained to him that no petition to reopen was going to be filed.
5 The consular official stated he was still going to wait before issuing a travel document.

6 17. On March 03, 2008, I spoke with the official from the Chinese Consulate who
7 interviewed Petitioner and was informed that he had submitted the application for Petitioner's travel
8 documents to mainland China for approval.


9 18. On March 17, 2008, and April 03, 2008, my office left messages with the Chinese
10 Consulate requesting the status of Petitioner's travel documents. On April 07, 2008, I left a voice
11 message and sent a fax to the Chinese Consulate requesting the status of his travel documents.

12 19. On April 28, 2008, my office transferred this matter to ICE's Headquarters Custody
13 Determination Unit in Washington, D.C., for a subsequent determination regarding Petitioner's
14 custody and to continue contact with the Chinese Consulate for the issuance of travel documents. I
15 will also continue to contact the Chinese Consulate for the issuance of Petitioner's travel documents.

16 20. In my experience the Chinese Consulate takes longer than most other countries to issue
17 travel documents, but I have not had a case where they have not eventually issued one. Once a
18 travel document is issued for Petitioner, his removal can be effected promptly.

19 I declare under penalty of perjury of the laws of the United States of America that the
20 foregoing is true and correct.

21 Executed this 23rd day of April 2008.

22 
23 Miguel Coronado
24 Deportation Officer
25 Otay Detention Facility
26 San Diego Field Office
27
28

KAREN P. HEWITT
United States Attorney
RAVEN M. NORRIS
Assistant U.S. Attorney
California State Bar No. 232868
CAROLINE J. CLARK
Assistant U.S. Attorney
California State Bar No. 220000
United States Attorney's Office
880 Front Street, Room 6293
San Diego, California 92101-8893
Telephone: (619) 557-7157/7491
Facsimile: (619) 557-5004

Attorneys for Respondents

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SUI HUAN CAO,

Case No. 08cv0511-DMS (BLM)

Petitioner,

V.

EXHIBIT E

MICHAEL CHERTOFF, Secretary of the Department of Homeland Security; MICHAEL MUKASEY, Attorney General; ROBIN F. BAKER, Director of San Diego Field Office; U.S. Immigration and Customs Enforcement; JOHN A. GARZON, Officer-in-Charge,

Respondents

EXHIBIT E

A. Name and address of obligor: International Fidelity Ins. Co. 321 Broadway, New York, N.Y. 10007
If this bond is executed by a surety company the following: Rate of premium: _____ Amount of premium \$ _____
The name and address of the person who executed a written instrument with the surety company requesting it to post the bond is: c/o CAO, Jian Chang 7635 Overbrook Ave. Philadelphia, Pa. 19151 (215) 923-4868

B. Name of alien for whom this bond is furnished: (If there is more than one alien, separate schedule showing name of each alien, date and country of his/her birth and arrival data, signed and sealed by the obligor and made part hereof, is attached.)
Name: CAO, Sui Huan Date and country of birth of alien: 6/14/70 China
Date, port and means of arrival in the United States: 12/23/83 NYC P4-3 Nationality of alien: Chinese

C. In consideration of the facts recited in paragraph or paragraphs herein numbered -2- and captioned Bond conditioned for the delivery of an alien (and in any rider or riders lettered _____ and captioned _____ attached hereto and made part hereof) the obligor above named, by subscribing hereto, hereby declares that he/she the sum of FIFTEEN THOUSAND dollars (\$ 15,000) that the alien shall not become a public charge; the obligor declares himself/herself bound in such amount or successive amounts (3) herein as liquidated damages and not as a penalty, which sum is to be paid to the United States immediately upon the occurrence of any such paragraph or rider. The obligor further agrees that any notice to him/her in connection with this bond shall be given to him/her at the above address. If bond is furnished for more than one alien, the obligor agrees that any reference to an alien shall be construed in the plural sense. The obligor acknowledges receipt of a copy of the executed bond and any attached rider. The burden of establishing compliance with the terms of the bond rests on the obligor. If this bond has been executed in consideration of paragraph (1) captioned "Bond for Maintenance of Status and Departure of Non-immigrant Alien" and has been furnished for more than one alien, the obligor who fails to comply with the terms thereof shall be _____ dollars (\$ _____) and the total sum of _____ dollars (\$ _____).

D. Signed and sealed in the presence of _____ Date: _____
Name _____ Name _____
Address _____ Address _____
(Witness) (Witness)
(Obligor) (SEAL)

E. PLEDGE AND POWER OF ATTORNEY FOR USE WHEN UNITED STATES BONDS OR NOTES ARE DEPOSITED AS SECURITY
The United States Bonds/Notes described in the following schedule are hereby pledged as security for the performance and fulfillment of the foregoing undertaking in accordance with 6 U.S.C. 15, 31 CFR Part 225, and Treasury Department Circular 154 (Revised), dated October 31, 1969, and I the obligor named in this bond do hereby appoint the Attorney General of the United States as my attorney for me and in my name to collect or to sell, assign and transfer said United States bond or notes and I agree that in case of any default in the performance of any of the conditions herein to which I have subscribed, my said attorney shall have the power to collect said bonds/notes or any part hereof or to sell, assign, and transfer said bonds/notes or any part thereof, without notice, at public or private sale, free from equity of redemption and without appraisal or valuation, notice, and right to redeem being waived, and to apply the proceeds in whole or in part to the satisfaction of any damages, demands, or deficiencies arising by reason of such default, as my said attorney may deem best.

TITLE OF BONDS/NOTES	COUPONS ATTACHED	FACE VALUE	INTEREST RATE	SERIAL NO.	INTEREST DATES

PLEDGE AND POWER OF ATTORNEY FOR USE WHEN CASH IS DEPOSITED AS SECURITY

The amount of _____ (\$ _____), cash money of the United States, is hereby pledged as security for the performance and fulfillment of the foregoing undertaking, and I, the obligor named in this bond, hereby appoint the Attorney General of the United States as my attorney for me and in my name to collect or to assign and transfer the said sum of money, and I agree that, in case of default in the performance of any of the conditions herein to which I have subscribed, my said attorney shall have full power to collect said sum of money or any part thereof or to assign and transfer said sum or any part thereof, without notice and to apply said sum or any part thereof to the satisfaction of any damages, demands, or deficiencies arising by reason of such default, as my said attorney may deem best. I further empower my said attorney, in the event all the conditions herein to which I have subscribed have been complied with and the bond is canceled, to deliver the said sum of money plus any interest accrued thereon, to me at my risk and expense by such means as he/she shall select.

IN WITNESS WHEREFORE, I have hereunto set my hand and seal this _____ day of _____, 19_____.
(SEAL)
Before me, within the county of _____ in the State of _____ (or the District of Columbia), personally appeared the above named _____ and acknowledged the execution of the foregoing power of attorney.
Witness my hand this _____ day of _____, 19_____.
(Signature) (Title)

F. Bond approved and accepted New York, N.Y. April 7 19 94
(City) (State)
NYC-S-07431 William S. Slattery
(District Director)

1 KAREN P. HEWITT
United States Attorney
2 RAVEN M. NORRIS
Assistant U.S. Attorney
3 California State Bar No. 232868
CAROLINE J. CLARK
4 Assistant U.S. Attorney
California State Bar No. 220000
5 United States Attorney's Office
880 Front Street, Room 6293
6 San Diego, California 92101-8893
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7 Facsimile: (619) 557-5004

8 Attorneys for Respondents

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SUI HUAN CAO,) Case No. 08cv0511-DMS (BLM)

12)
Petitioner,)

13)
v.)

EXHIBIT F

14 MICHAEL CHERTOFF, Secretary of the)
Department of Homeland Security; MICHAEL)
15 MUKASEY, Attorney General; ROBIN F.)
BAKER, Director of San Diego Field Office;)
16 U.S. Immigration and Customs Enforcement;)
JOHN A. GARZON, Officer-in-Charge,)

17)
Respondents)
18 _____)

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27 EXHIBIT F
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U.S. Department of Justice
Executive Office for Immigration Review
Office of the Immigration Judge

Matter of

File A 38 494 554

SUI, HUAN CAO

AKA STEPHEN TSO,

Respondent

)
)
)
) IN DEPORTATION PROCEEDINGS
)
)

Transcript of Hearing

Before: SANDY HOM, Immigration Judge

Date: May 27, 1994

Place: New York, New York

Transcribed by DEPOSITION SERVICES, INC. At Rockville, Maryland

Official Interpreter:

Language:

Appearances:

For the Immigration and
Naturalization Service:

William Jankun, Esquire

For the Respondent:

Mahmoud Ramadan, Esquire

jw

1 JUDGE FOR THE RECORD

2 This is a deportation proceeding in the matter of Sui
3 Huan Cao, A 38 494 554. Today is May 27th, 1994 and this is
4 Immigration Judge Sandy Hom sitting in New York.

5 Representing the Service is Mr. William Jankun.
6 Representing the respondent is Mr. Mohammed Ramadan, 299
7 Broadway, Suite 1400, New York, New York 10007.

8 JUDGE TO MR. SUI

9 Q. To the respondent, do you speak any English?

10 A. (No audible response).

11 Q. Do you understand English, sir?

12 A. Yes.

13 Q. What is your name?

14 A. It's Sui Huan Cao.

15 Q. Where do you live?

16 A. Where do I live?

17 Q. Yes, your present address.

18 A. (No audible response).

19 Q. Where's your home?

20 A. 284 Crescent Street.

21 Q. 284 Christy?

22 A. Crescent. 284 Crescent.

23 Q. Where is that?

24 A. Brooklyn.

25 Q. Brooklyn?

jw

1 A. Yeah.

2 Q. Zip code?

3 A. Zip code would be 11208.

4 Q. And the person who's sitting next to you, is he
5 your lawyer?

6 A. Yes.

7 Q. Is he authorized to speak on your behalf?

8 A. (No audible response).

9 Q. Can he speak for you today?

10 A. Yeah.

11 JUDGE FOR THE RECORD

12 Pertained in the record of proceeding, I have several
13 documents. Exhibit 1 being an Order to Show Cause and notice of
14 hearing. Exhibit 2, copy of an immigrant visa and alien
15 registration cover sheet. I think those are the only two
16 documents I have marked as exhibits.

17 JUDGE TO MR. RAMADAN

18 Q. There are seven factual allegations contained in
19 the Order to Show Cause. How do you plead to them?

20 A. We admit allegation one on behalf of my client. I
21 admit allegation two, allegation three, allegation four, and I'm
22 not sure as to five and six.

23 JUDGE FOR THE RECORD

24 The Court has contained in the record of proceedings it
25 appears to be a record of conviction for a Stephen Tso,

jw

1 indictment number 1125, two of '89, guilty for trial on August
2 7th, 1990, part 73; sentencing was September 26th, 1990.

3 The second one plea on February 5th, 1990 for a trial,
4 Supreme Court, State of New York.

5 MR. RAMADAN TO JUDGE

6 Q. Yeah, I found it.

7 A. All right.

8 JUDGE TO MR. RAMADAN

9 Q. So with respect to five?

10 A. Admit.

11 Q. And six?

12 A. Admit.

13 Q. Seven?

14 A. Admit.

15 JUDGE FOR THE RECORD

16 The Court will mark the records of convictions as
17 Exhibit 3.

18 MR. RAMADAN TO JUDGE

19 Q. Judge, if you will excuse me, on seven I am not in
20 a position to plead to that.

21 A. Deny?

22 Q. Yes.

23 JUDGE TO MR. RAMADAN

24 Q. And with respect to grounds of deportability?

25 A. Admit.

jw

1 Q. In the event of deportation, do you designate a
2 country?

3 A. Yes, China.

4 Q. Relief?

5 A. 212(c), Judge.

6 Q. Do you have the application?

7 A. Not at this time. I'd like a date for filing.

8 Q. If I give you until June 27th, that will be
9 sufficient time, 1994?

10 A. I believe so, Judge.

11 Q. Failure to file will be considered abandonment and
12 a waiver of that claim and the Court can proceed with an order at
13 that time. April 24th, 1995 at 9 o'clock?

14 A. Okay.

15 Q. Best language?

16 A. Cantonese.

17 JUDGE TO MR. SUI

18 Q. To the respondent, should you file your
19 application in a timely manner, you're going to have a hearing on
20 the merits of this case on April 24th, 1995 at 9 o'clock in the
21 morning. I'm going to tell you if you fail to appear, there are
22 certain consequences for your failure to appear. I'm going to
23 give you in writing those consequences both in English and in
24 Spanish as I'm required to do, and this blue change of address
25 form. In the event you should change your address, you must

jw

1 notify the Court within five days.

2 Do you understand?

3 A, Yes.

4 JUDGE TO MR. RAMADAN

5 Q. Counsel, do you waive a formal reading of 242(b)?

6 A. Yes, Judge.

7 Q. This is for your client. Please give this copy to
8 Mr. Jankun.

9 JUDGE TO COUNSEL

10 Q. Anything else from the parties?

11 A. (Mr. Jankun) Nothing further, Judge.

12 Q. (Mr. Ramadan) Nothing further, Judge.

13 JUDGE FOR THE RECORD

14 If nothing further, this matter is adjourned.

15 HEARING CONTINUED

16

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1 KAREN P. HEWITT
United States Attorney
2 RAVEN M. NORRIS
Assistant U.S. Attorney
3 California State Bar No. 232868
CAROLINE J. CLARK
Assistant U.S. Attorney
4 California State Bar No. 220000
United States Attorney's Office
5 880 Front Street, Room 6293
San Diego, California 92101-8893
6 Telephone: (619) 557-7157/7491
7 Facsimile: (619) 557-5004

8 Attorneys for Respondents

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SUI HUAN CAO,

12 Petitioner,

13 v.

14 MICHAEL CHERTOFF, Secretary of the
Department of Homeland Security; MICHAEL
15 MUKASEY, Attorney General; ROBIN F.)
BAKER, Director of San Diego Field Office;)
16 U.S. Immigration and Customs Enforcement;)
JOHN A. GARZON, Officer-in-Charge,

17 Respondents
18

Case No. 08cv0511-DMS (BLM)

EXHIBIT G

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27 EXHIBIT G
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DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
26 Federal Plaza, Room 13-130
New York, N.Y. 10278

File No: 38-494-354

Date: 10/2/95

In the Matter of

SUI HUAN CAO

IN DEPORTATION/EXCLUSION PROCEEDINGS

Respondent/Applicant

ON BEHALF OF RESPONDENT/APPLICANT:

M. RAMADAN, Esq.

ON BEHALF OF SERVICE:

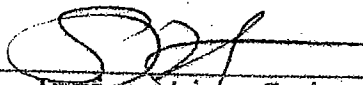
J. Yi, Esq.

MEMORANDUM OF ORAL DECISION

THIS MEMORANDUM IS A SUMMARY OF THE ORAL DECISION RENDERED AT NEW YORK CITY, NEW YORK. IF THE DECISION IS APPEALED, THE FULL TEXT OF THE DECISION AND ORDER WILL BE TRANSCRIBED AND PROVIDED TO THE PARTIES

- ☒ The Respondent was ordered deported to P.R. of CHINA or _____.
- ☐ The Respondent was granted/denied voluntary departure on or before _____ with an alternate order of deportation to _____.
- ☐ The Respondent was granted/denied Suspension of Deportation under Section 244(a) of the Act.
- ☐ The Respondent was granted/denied Adjustment of Status.
- ☐ The Respondent's adjustment of status was/not rescinded under Section 246 of the Act.
- ☐ The Applicant has been ordered excluded and deported.
- ☐ The Applicant was admitted to the United States as a _____ until _____.
- ☐ The Applicant's request to withdraw the application for admission to the U.S. was granted, provided departure occurs not later than _____.
- ☐ The Applicant/Respondent was granted/denied Asylum/Withholding of Deportation under Section 208(a)/243(h) of the Act.
- ☒ The Applicant/Respondent was granted/denied a waiver under Section 212(c) of the Act, and proceedings were terminated. Concluded
- ☐ Requested relief pursuant to Section _____ of the Act was deemed to be abandoned because of failure to prosecute.
- ☒ The proceedings were terminated.
- ☐ The Service/Respondent/Applicant has reserved/awaited appeal. If appeal has been reserved, appeal must be filed by 10/12/95.
- ☐ Other _____.

0330D


Immigration Judge

1 KAREN P. HEWITT
United States Attorney
2 RAVEN M. NORRIS
Assistant U.S. Attorney
3 California State Bar No. 232868
CAROLINE J. CLARK
4 Assistant U.S. Attorney
California State Bar No. 220000
5 United States Attorney's Office
880 Front Street, Room 6293
6 San Diego, California 92101-8893
Telephone: (619) 557-7157/7491
7 Facsimile: (619) 557-5004

8 Attorneys for Respondents

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SUI HUAN CAO,)	Case No. 08cv0511-DMS (BLM)
)	
12 Petitioner,)	
)	
13 v.)	
)	EXHIBIT H
14 MICHAEL CHERTOFF, Secretary of the)	
Department of Homeland Security; MICHAEL)	
15 MUKASEY, Attorney General; ROBIN F.))	
BAKER, Director of San Diego Field Office;)	
16 U.S. Immigration and Customs Enforcement;)	
JOHN A. GARZON, Officer-in-Charge,)	
)	
17 Respondents)	
18)	

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28 EXHIBIT H

**NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS
OF DECISION OF IMMIGRATION JUDGE**

In the Matter:

SUI HUAN CAO

Fee Stamp

File Number: A 38 - 494 - 554

1. Appellant is currently ☐ DETAINED ☒ NOT DETAINED.
2. Specify reasons for this appeal and continue on separate sheets if necessary. If the factual or legal basis for the appeal is not sufficiently described the appeal may be summarily dismissed.

The Immigration Judge erred in denying respondent relief from deportation pursuant to Section 212(c) of the INA.

The I.J. abused his discretion by failing to properly weigh and balance the overwhelming positive factors presented, specifically evidence of rehabilitation, and by overemphasizing certain negative factors.

3. I ☐ do ☒ do not desire oral argument before the Board of Immigration Appeals in Falls Church, Virginia.
4. I ☒ am ☐ am not filing a separate written brief or statement.

Sui Huan Cao
Signature of Appellant
(or attorney or representative)

SUI HUAN CAO
(print or type name)

C/O MAHMOUD RAMADAN, ESQ.

299 Broadway - Suite 1400

New York, New York 10007

Address (number, street, city, state, Zip code)

October 11, 1995

Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed first class, postage prepaid, on October 11, 1995,
to INS-Office of the Trial Attorney, 26 Federal Plaza, New York, New York 10278.

[Signature]
Signature of Appellant
(or attorney or representative)

1 KAREN P. HEWITT
United States Attorney
2 RAVEN M. NORRIS
Assistant U.S. Attorney
3 California State Bar No. 232868
CAROLINE J. CLARK
4 Assistant U.S. Attorney
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5 United States Attorney's Office
880 Front Street, Room 6293
6 San Diego, California 92101-8893
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8 Attorneys for Respondents

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SUI HUAN CAO,) Case No. 08cv0511-DMS (BLM)
12)
Petitioner,)
13)
v.)
14) EXHIBIT I
MICHAEL CHERTOFF, Secretary of the)
Department of Homeland Security; MICHAEL)
15 MUKASEY, Attorney General; ROBIN F.)
BAKER, Director of San Diego Field Office;)
16 U.S. Immigration and Customs Enforcement;)
JOHN A. GARZON, Officer-in-Charge,)
17)
Respondents)
18)

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27 EXHIBIT I
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U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

RECEIVED
US IMM. & NAT. SERVICE
Decision of the Board of Immigration Appeals

97 MAR 26 PM 3:21

O'Sullivan

File: A38-494-554 - NYC

Date:

MAR 24 1997

In re: CAO, SUI HUAN

IN DEPORTATION PROCEEDINGS

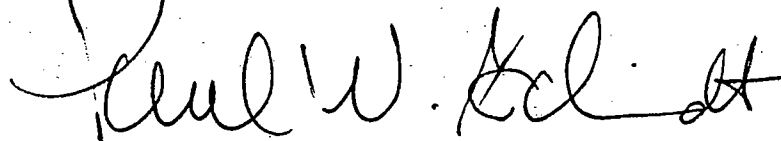
APPEAL

ON BEHALF OF RESPONDENT: Ramadan, Mahmoud, Esq.
299 Broadway., Suite 1400,
New York, NY 10007

APPLICATION: Waiver of inadmissibility

ORDER:

PER CURIAM. You are seeking relief from deportation under section 212(c) of the Immigration and Nationality Act, 8 U.S.C. § 1182(c). However, you are statutorily ineligible for such relief as an "alien who is deportable by reason of having committed any criminal offense covered in section 241(a)(2)(A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are covered by section 241(a)(2)(A)(i)." See Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 ("AEDPA") § 440(d); Matter of Soriano, Interim Decision 3289 (A.G., Feb. 21, 1997). Accordingly, your appeal is dismissed.



FOR THE BOARD

KAREN P. HEWITT
 United States Attorney
 RAVEN M. NORRIS
 Assistant U.S. Attorney
 California State Bar No. 232868
 CAROLINE J. CLARK
 Assistant U.S. Attorney
 California State Bar No. 220000
 United States Attorney's Office
 880 Front Street, Room 6293
 San Diego, California 92101-8893
 Telephone: (619) 557-7157/7491
 Facsimile: (619) 557-5004

Attorneys for Respondents

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

SUI HUAN CAO,)	Case No. 08cv0511-DMS (BLM)
)	
Petitioner,)	
)	
v.)	
)	EXHIBIT J
MICHAEL CHERTOFF, Secretary of the)	
Department of Homeland Security; MICHAEL)	
MUKASEY, Attorney General; ROBIN F.))	
BAKER, Director of San Diego Field Office;))	
U.S. Immigration and Customs Enforcement;))	
JOHN A. GARZON, Officer-in-Charge,)	
)	
Respondents)	

EXHIBIT J

U.S Department of Justice

Immigration and Naturalization Service

Warrant of Removal/DeportationFile No: A38 494 554Date: April 1, 1998**To any officer of the United States Immigration and Naturalization Service:**CAO, Sui Huan aka: TSO, Steven

(Full name of alien)

who entered the United States at or near New York, New York

(Place of entry)

on or about December 23, 1983

(Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☐ an immigration judge in exclusion, deportation, or removal proceedings
- ☐ a district director or a district director's designated official
- ☒ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

Section 241 (a)(2)(A)(ii) of the Immigration and Nationality Act.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of: *appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1998", including the expenses of an attendant if necessary.*



(Signature of INS official)

Assistant District Director For Detention & Deportation

(Title of INS official)

April 1, 1998New York District

(Date and office location)

KAREN P. HEWITT
United States Attorney
RAVEN M. NORRIS
Assistant U.S. Attorney
California State Bar No. 232868
CAROLINE J. CLARK
Assistant U.S. Attorney
California State Bar No. 220000
United States Attorney's Office
880 Front Street, Room 6293
San Diego, California 92101-8893
Telephone: (619) 557-7157/7491
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Attorneys for Respondents

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SUI HUAN CAO,

Petitioner,

v.

MICHAEL CHERTOFF, Secretary of the
Department of Homeland Security; MICHAEL)
MUKASEY, Attorney General; ROBIN F.)
BAKER, Director of San Diego Field Office;))
U.S. Immigration and Customs Enforcement;))
JOHN A. GARZON, Officer-in-Charge,)

Respondents

Case No. 08cv0511-DMS (BLM)

EXHIBIT K

EXHIBIT K

EXHIBIT K



**UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
26 FEDERAL PLAZA
NEW YORK, NY 10278**

FILE NUMBER : A38 494 554 TUY
DATE : July 02, 1999

International Fidelity Ins. Co.
321 Broadway
New York, NY 10007

RE : CAO, Sui Huan

**PURSUANT TO THE TERMS OF THE BOND POSTED BY YOU FOR THE RELEASE
FROM CUSTODY OF THE ABOVE NAMED ALIEN(S), DEMAND IS HEREBY MADE
UPON YOU TO SURRENDER SUCH ALIEN(S) FOR CUSTODY AT THE FOLLOWING
DATE, PLACE AND TIME**

DATE: August 06, 1999

PLACE: 26 Federal Plaza, Room 12-110, 12th Flr.
New York, NY 10278

TIME: 9:00am

**YOU ARE INFORMED THAT FAILURE TO SURRENDER THE ALIEN(S) IN
ACCORDANCE WITH THIS DEMAND WILL RESULT IN STEPS BEING TAKEN
TOWARD THE BREACHING OF THE ABOVE MENTIONED BOND AND ITS
FORFEITURE TO THE GOVERNMENT.**

Very Truly Yours,

Edward J. McElroy
District Director
New York District

CERTIFIED MAIL RETURN RECEIPT REQUESTED
I-340 (C)



**UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
26 FEDERAL PLAZA
NEW YORK, NY 10278**

FILE NUMBER : A38 494 554 TUY
DATE : July 02, 1999

International Fidelity Ins. Co.
321 Broadway
New York, NY 10007

RE : CAO, Sui Huan

PURSUANT TO THE TERMS OF THE BOND POSTED BY YOU FOR THE RELEASE FROM CUSTODY OF THE ABOVE NAMED ALIEN(S), DEMAND IS HEREBY MADE UPON YOU TO SURRENDER SUCH ALIEN(S) FOR CUSTODY AT THE FOLLOWING DATE, PLACE AND TIME

DATE: August 06, 1999

PLACE: 26 Federal Plaza, Room 12-110, 12th Flr.
New York, NY 10278

Sum. w/valid PP

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Ret. in Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery
Consult postmaster for fee.

3. Article Addressed to:
International Fidelity Ins. Co.
321 Broadway
New York, NY 10007

4a. Article Number
704 340

4b. Service Type

☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
7-15

5. Received By (Print Name)
[Signature]

6. Signature: (Addressee or Agent)
X [Signature]

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994 102595-98-B-0229 Domestic Return Receipt

Thank you for using Return Receipt Service.

8/6/99
reled to Sum
INS/BOND BLUFF

1 KAREN P. HEWITT
United States Attorney
2 RAVEN M. NORRIS
Assistant U.S. Attorney
3 California State Bar No. 232868
CAROLINE J. CLARK
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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SUI HUAN CAO,) Case No. 08cv0511-DMS (BLM)
12)
Petitioner,)
13)
v.)
14) EXHIBIT L
MICHAEL CHERTOFF, Secretary of the)
Department of Homeland Security; MICHAEL)
15 MUKASEY, Attorney General; ROBIN F.)
BAKER, Director of San Diego Field Office;)
16 U.S. Immigration and Customs Enforcement;)
JOHN A. GARZON, Officer-in-Charge,)
17)
Respondents)
18)

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27 EXHIBIT L
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U.S. Department of Justice
Immigration and Naturalization Service

Record of Deportable/Inadmissible Alien

Family Name (CAPS) CAO, Sui Huan		First	Middle	Sex M	Hair BLK	Eyes BRO	Cmplxn MED
Country of Citizenship CHINA, PEOPLES REPUBLIC OF	Passport Number and Country of Issue	Case No: A038 494 554	File Number PHI0706000071	Height 69	Weight 170	Occupation Cook	
U.S. Address 7635 OVERBROOK AVE PHILADELPHIA, PENNSYLVANIA 19151				Scars and Marks See Narrative			
Date, Place, Time, and Manner of Last Entry 12/23/1983, Unknown Time, NYC, P4				Passenger Boarded at			
Number, Street, City, Province (State) and Country of Permanent Residence				F.B.I. Number 914467HA2 <input checked="" type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Married <input type="checkbox"/> Widower <input type="checkbox"/> Separated			
Date of Birth 06/14/1970	Age: 36	Date of Action 06/05/2007	Location Code PHI/PHI	Method of Location/Apprehension L 516.1			
City, Province (State) and Country of Birth OTR, CHINA, PEOPLES REPUBLIC OF	AR <input checked="" type="checkbox"/>	Form: (Type and No.)	Lifted <input type="checkbox"/> Not Lifted <input type="checkbox"/>	At/Near Philadelphia, PA			
NIV Issuing Post and NIV Number	Social Security Account Name			Date/Hour 06/05/2007 0000			
Date Visa Issued	Social Security Number 077-72-2339			By See Narrative			
Immigration Record NEGATIVE - See Narrative			Criminal Record None known				
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)				Number and Nationality of Minor Children 2 USC			
Father's Name, Nationality, and Address, if Known Nationality: CHINA, PEOPLES REPUBLIC OF CAO, CHENG SAME AS SUBJECT				Mother's Present and Maiden Names, Nationality, and Address, if Known YE, Yun Di SAME AS SUBJECT			
Monies Due/Property in U.S. Not in Immediate Possession	Fingerprinted? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	INS Systems Checks See Narrative	Charge Code Word(s)				
Name and Address of (Last)/(Current) U.S. Employer	Type of Employment	Salary	Employed from/to Hr.				
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)							
FIN #: 12599216 OTHER ALIASES KNOWN BY TSO, STEVEN CHO, STEPHEN SCARS, MARKS AND TATTOOS TATTOO ARM, LEFT UPPER TATTOO ARM, RIGHT UPPER APPREHENDED BY DONNELL GRIFFIN RYAN MORRIS KEVIN WETZEL KRISTIN VAN ARSDALE INS SYSTEMS CHECKS Central Index System Positive Deportable Alien Control System Positive Integrated Automated Fingerprint Identification System Positive National Crime Information Center Positive Narrative Title: Record of Deportable/Excludable Alien							
Alien has been advised of communication privileges. _____ (Date/Initials)				RYAN MORRIS DEPORTATION OFFICER _____ (Signature and Title of INS Official)			
Distribution: File Stats Fug Ops				Received: (Subject and Documents) (Report of Interview) Officer: RYAN MORRIS on: June 5, 2007 12:00 at _____ (time) Disposition: Bag and Baggage Examining Officer: PATRICK S. MCCALLION			

Alien's Name

File Number

Date

Case No: PHI0706000071

A038 494 554

06/05/2007

CAO, Sui Huan

Narrative Created by MORRIS

Subject's alienage and deportability established through the following means:

- 1) Conversation with the Law Enforcement Support Center
- 2) Review of all ICE indices
- 3) Personal Field Interview with subject

Encounter:

On June 5, 2007, at approximately 0700 hours, this writer along with the officers mentioned above, attempted to locate A [REDACTED] at his last known address of 7635 Overbrook Ave in Philadelphia, PA. The said offices were permitted to enter the address by the subject's mother. This writer interviewed the subject, and the subject stated that he knows the target, however the subject has not seen the target in about ten years. The subject stated that the target lived in the Overbrook Ave address as a tenant renting a room, but moved out almost ten years ago. The subject stated that he was a Citizen of China, and showed this writer a PADL (24 698 649) bearing the name Steven Sui-Huan Cao, but stated that his given name is CAO, Sui Huan. The subject's given name was run in CIS by the LESC. The LESC stated the subject's name and DOB was a match for the someone bearing the subject's A number. The subject stated that he was before an Immigration Judge some time ago, but did not know the outcome of the case. The subject was arrested as a fugitive wanted by this agency, and was transported to the Philadelphia Field Office where he was processed without incident.

Immigration History/Status:

Subject is a native and citizen of China. Subject last entered the U.S. on December 23, 1983 at New York, NY as a P43(child of a P41, married son or daughter of a USC). The subject was present before an Immigration Judge, on or about October 2, 1995. At that time the subject was denied all forms of relief, and was ordered deported from the United States. The subject appealed this decision to the Board of Immigration Appeals. On April 24, 1997 the BIA also denied all forms of relief, and ordered the subject deported from the US. The subject has been living as a fugitive wanted by the Department of Homeland Security since that date. There is no evidence that the subject appealed this decision to any federal appeals court per the PACER system.

The subject claims that he has no applications or appeals pending at this time.

Criminal History:

The subject's fingerprints were live scanned and submitted into IDENT/IAFIS and revealed the following criminal history:

The subject was arrested in Philadelphia, PA on August 13, 1996 for the following crimes;

Signature

Title

RYAN MORRIS

DEPORTATION OFFICER

Alien's Name CAO, Sui Huan	File Number Case No: PHI0706000071 A038 494 554	Date 06/05/2007
<p>Aggravated Assault, Criminal Conspiracy, PIC, Robbery, Theft by Unlawful Taking, Possession of a Weapon, Kidnapping, Receiving Stolen Property, Simple Assault, Terroristic Threats, Unlawful Restraint, and False Imprisonment. On March 18, 1997 the subject plead guilty to Simple Assault, Terroristic Threats, Unlawful Restraint. For this the subject received Probation.</p> <p>The subject was arrested on December 16, 1988 in Queens County, NY for; Kidnapping, 1st Degree Robbery, Burglary with a Weapon, Criminal Use of a Firearm, Unlawful Imprisonment. On April 3, 1990 the subject plead guilty to Attempted Robbery in the 2nd Degree, a class D felony and was sentenced to 1-3 years.</p> <p>The subject was arrested in New York County on September 27, 1989 for the following offenses; 3 counts of 1st degree Robbery, Burglary, Criminal use of a Firearm, Criminal Possession of a Weapon, Criminal Possession of Stolen Property. On September 25, 1990 the subject plead guilty to 1st degree Robbery, and was sentenced to 2-6 years.</p> <p>Processing Disposition:</p> <p>The subject will be processed as a Criminal Fugitive and transferred to an Immigration Detention Facility pending his removal.</p> <p>Miscellaneous Information:</p> <p>The subject claims to be in good medical condition. The subject claims no health problems.</p> <p>The subject has no known equity in the US.</p> <p>It is unknown if the subject has an Immigration Attorney on file, as the file is located in the LESC.</p> <p>The subject was informed of his right to communicate with the Consulate of China. The subject refused to acknowledge this right, and refused to sign or state his wish to communicate with the Consulate.</p> <p>Consular notification is mandatory therefore it will be done.</p> <p>The subject Alien file is located in the LESC, and will be requested via DHL.</p>		
Signature RYAN MORRIS	Title DEPORTATION OFFICER	

1 KAREN P. HEWITT
United States Attorney
2 RAVEN M. NORRIS
Assistant U.S. Attorney
3 California State Bar No. 232868
CAROLINE J. CLARK
4 Assistant U.S. Attorney
California State Bar No. 220000
5 United States Attorney's Office
880 Front Street, Room 6293
6 San Diego, California 92101-8893
Telephone: (619) 557-7157/7491
7 Facsimile: (619) 557-5004

8 Attorneys for Respondents

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SUI HUAN CAO,

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13 v.

14 MICHAEL CHERTOFF, Secretary of the
Department of Homeland Security; MICHAEL
15 MUKASEY, Attorney General; ROBIN F.)
BAKER, Director of San Diego Field Office;)
16 U.S. Immigration and Customs Enforcement;)
JOHN A. GARZON, Officer-in-Charge,

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) Case No. 08cv0511-DMS (BLM)

) EXHIBIT M

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27 EXHIBIT M
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**Department of Homeland Security
Immigration and Customs Enforcement**

*446 Alta Road, Suite 5400
San Diego, CA 92158*

November 28, 2007

Consulate of The People's Republic of China
443 Shatto Place
Los Angeles, CA 90020
Tel: (213) 807-8088
Fax: (213) 807-8091

Dear Consul Zhang Kaibin:

RE: CAO, SUI HUAN A38 494 554

Please issue a travel document for the above named individual(s), so we may effect his removal to The People's Republic of China.

Enclosed, you will find (4) photos, a completed travel document application(s), Information for Travel Document or Passport (Form I-217), Immigrant Visa and Alien Registration (OF-155), Petition for Immigrant Visa and Alien Registration, BIA Waiver of Inadmissibility, Immigration Judge Order, Record of Deportable/Inadmissible Alien (Form I-213), Order to Show Cause and Notice of Hearing, abstract of judgment, and a prepaid/self-addressed returned DHL envelope. Please call (619) 710-8334 to schedule a telephonic interview, or if we can be of assistance. Our fax is (619) 710-8397.

Thank you for your prompt response to the above request. Your cooperation and assistance in this matter are greatly appreciated.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "E. Ritualo".

Edwardo S. Ritualo
Deportation Assistant
Detention and Removal Operations

Enclosures

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POST ORDER CUSTODY REVIEW WORKSHEET

Detainee Name: CAO, Sui Huan

AKA(s):

Date of Birth: 06/14/70

A Number: 38 494 554

Place of Birth: China

Nationality: China

Date of Last Arrival: 12/23/83

Place of Arrival: New York, N.Y.

Status at Last Entry: Immigrant (P43)

Last Date into ICE Custody: 06/05/07

Entered ICE Custody from:

☐

Local, State, or Federal Institution

Institution Name/Location: Donovan State Prison

BOP/ Institution Numbers:

☐

Other:

Deportation Case Officer: M. Coronado

Review Date: 01/14/07

Contact Phone #: (619) 710-8383

ICE Location Detained and DCO: Otay Detention Facility, San Diego, CA.

Deportation/Exclusion/Removal Proceedings

List all Charges:

☐

Section 237 (a) (2)(A)(iii)

☐

Section 212 (a)

☒

Section 241 (a) (2)(A)(ii)

☒ Under Final Order dated: April 24, 1997, By ☐ IJ ☒ BIA ☐ Other:

☒ Appeal Waived/Appeal Time Elapsed

Habeas filed: ☐ Yes/ Date & Location filed ☒ No

Stay Issued in Case: ☒ No ☐ Yes/Why and Who Issued

Legal Representative / Attorney

G-28 Filed: ☐ Yes ☒ No

Notification of Review Made: ☒ No ☐ Yes **By:**

Name of Representative / Attorney: N / A

Mailing Address:

Present during

Telephone Number:

interview: ☐ Yes ☒ No

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CAO entered the United States at New York, NY on December 23, 1993 as an immigrant. On April 4, 1993, CAO was served with an Order to Show Cause charging him as deportable from the United States based on multiple criminal convictions.

On October 2, 1995, an Immigration Judge ordered CAO deported from the United States to China. CAO appealed this decision to the Board of Immigration Appeals (BIA), and on April 24, 1997, the appeal was dismissed. CAO was on bond at the time and failed to report for deportation. The San Diego DRO Fugitive Operations Team apprehended CAO on June 5, 2007.

NCIC Checks:

☒ Criminal History
(State and Federal)

☐ No record Found

Criminal History: (list convictions, sentence, date, court, and include a summary of other NCIC arrests, failures to appear, etc.)

03/18/98 – Simple assault, Terrorist threats, Unlawful restraint – Felony - Convicted – Unknown sentence, Pennsylvania.

04/03/90 – Kidnap w/ intent to collect ransom, Attempted robbery 2nd degree - Felony – Convicted – 1-3 years incarcerated, New York.

09/25/90 – Robbery 1st degree: Force, Crim use F/arm 2nd – Felony – Convicted - 2-6 years incarcerated, New York.

(DO NOT FORWARD A COPY OF THE NCIC PRINTOUT TO HQCDU)

Institutional / Disciplinary Record

Did the detainee have prior Disciplinary Reports? ☐ Yes ☒ No

If Yes, List & Describe: Behavior that could lead to Violence, Failure to Report, Giving Inmate a Tattoo, Tattoos/Receiving a Tattoo, Failure to Report to Job Assignment,

Disciplinary reports and incidents while in ICE Custody? ☐ Yes ☒ No

If Yes, List & Describe:

Source:

Specifics of Review

Date of File Review: 01/14/08

Date of Detainee Interview: (optional)

Location of Interview:

Reviewing/Interviewing Officer: #1: M. Coronado

#2:

Interpreter Used: (If subject was interviewed) ☐ Yes ☒ No

Name:

Language/Dialect:

Discussion at interview/review:

Only file review conducted.

Travel Document Status/History:

List aliens attempts to get travel documents and status (to include any actions alien has taken to *prevent* removal, and date of service of I-229(a) and Instruction Sheet to Detainee):

Served I-229 on 01/07/08. Completed Chinese passport application.

List ICE's attempts to obtain a travel document and status:

On November 28, 2007, the Removal Unit mailed a travel document request to the Consulate of China in Los Angeles, CA. Several attempts to contact the Chinese consulate have been made but no response has been received.

Does the detainee have a place to live in the United States?

☒ Yes ☐ No

7635 Overbrook Ave
Philadelphia, PA 19157
(215) 879-0794 (267) 334-4426

Is the detainee subject to any parole or probation requirements?

☐ Yes ☒ No

N / A

Does the detainee have close family ties within the United States?

☒ Yes ☐ No

Sister Qing Cao (267) [REDACTED]

[REDACTED]

Blockwood, NJ

Sister Jioug Cao (215) [REDACTED]

Aunt (917) [REDACTED]

Aunt (610) [REDACTED]

Does the detainee have community ties or non-governmental sponsors? ☒ Yes ☐ No

After school volunteer / community service

David Seng (267) [REDACTED]

Does the detainee have any employment prospects?

☒ Yes ☐ No

TE Trucking Co Tommy Cheung

145-18 156 St #G2 (646) [REDACTED]

Lamair, NY 11434

What is the detainee's employment history?

Same as above and KO-WAN Restaurant
3326 West Morning Ave
Philadelphia, PA 19134

What is the detainee's educational level?

Describe: Claims High School graduate

Does the detainee have any vocational training?

☒ Yes ☐ No

Trained as volunteer at after school community service

Managed restaurant for 10 years

Drove truck for 3 years

Has the detainee submitted any evidence of rehabilitation, courses while in prison, etc?

☐ Yes ☒ No

Medical/Psychological Concerns

Does the detainee have any medical or psychological issues:

☐ Yes ☒ No

Description (to include Date and Source):

N / A

Other documentary evidence for consideration in this review (include any documentation submitted by detainee):

None provided.

Special Circumstances Concerns

Does the detainee appear to meet any of the criteria of 8 CFR 241.14 for continued detention?

☒ No ☐ Yes (indicate below):

- ☐ Aliens with a Highly Contagious Disease that is a Threat to Public Safety [8 CFR § 241.14(b)].
- ☐ Aliens Detained on Account of Serious Adverse Foreign Policy Consequences of Release [8 CFR § 241.14(c)].
- ☐ Aliens Detained on Account of Security or Terrorism Concerns [8 CFR § 241.14(d)].
- ☐ Detention of Aliens Determined to be Specially Dangerous [8 CFR § 241.14(f)]. Aliens who pose a threat to the public because they have committed a crime of violence, have a mental disorder and behavior associated with the disorder, and are likely to be violent in the future.

All cases that may possibly meet any of these provisions must be coordinated with HQCDU per existing guidance.

Officer Comments/Analysis & Recommendation

CAO is a 37-year-old male native and citizen of China who entered the United States on December 23, 1983, at New York, NY as a P41 Legal Permanent Resident. On October 2, 1995, an Immigration Judge ordered CAO removed from the United States to China. CAO's appeal to the BIA was dismissed on April 24, 1997. CAO failed to surrender for Removal and was a fugitive until his apprehension on June 5, 2007.

A review of CAO's A-file reveals three serious felony convictions, two in 1990 and one in 1998. On April 3, 1990 he was convicted of kidnapping with intent to collect ransom, and attempted robbery 2nd degree. CAO was sentenced to 1-3 years of incarceration in New York. On September 25, 1990 CAO was convicted of robbery 1st degree: Force, Crim use F/arm 2nd degree, and was sentenced to 2-6 years incarceration in New York.

On March 18, 1998, he was convicted of simple assault, terrorist threats, and unlawful restraint. CAO received an unknown sentence for these crimes in Pennsylvania. CAO's criminal history clearly demonstrates that he is a violent person with no respect for the law or the lives of others. He has shown a propensity for violence and has demonstrated a callous and dangerous criminal lifestyle, which deems him a threat to the community.

In addition, CAO has not shown himself to be remorseful for his crimes, nor has he shown any signs of rehabilitation. CAO was a fugitive from deportation for over 10 years until he was encountered and arrested.

Based on the violent nature and severity of CAO's criminal history, the likelihood that he will re-offend, and the fact that he has not proven to ICE that he has in good faith changed his disruptive behavior, it is this officer's belief that CAO still poses a great danger to the community. For these reasons, I recommend CAO remain detained.

Reviewing Officer #1

Name/Title: Kent D. Haroldsen – SDDO

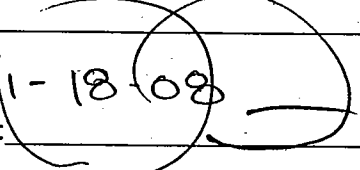
Date: 01-18-08

Signature: 

Reviewing Officer #2

Name/Title: Eddie C. Johnson – SDDO

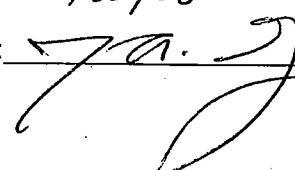
Date: 01-18-08

Signature: 

Supervisory Reviewing Officer

Name/Title: John A. Garzon - AFOD

Date: 1/22/08

Signature: 

1 KAREN P. HEWITT
United States Attorney
2 RAVEN M. NORRIS
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U.S. Department of Homeland Security
880 Front Street
San Diego, California 92101**U.S. Immigration
and Customs
Enforcement**CAO, Sui Huan
C/O Corrections Corporation of America
Otay Detention Facility
446 Alta Road, Suite 5400
San Diego, California 92158

A 38 494 554

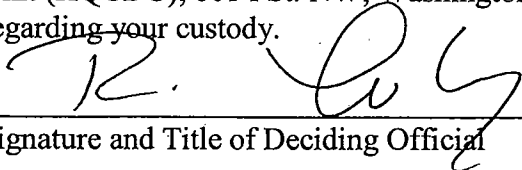
Decision to Continue Detention

This letter is to inform you that your custody status has been reviewed and it has been determined that you will not be released from the custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your file and/or your personal interview and consideration of any information you submitted to ICE's reviewing officials.

Information from your immigration file reveals the following: You arrived in the United States in 1983, at the age of 13. By the time you reached your 20th birthday you had already been convicted of four serious felony crimes. Several years later you were again convicted of three serious felony crimes. You have demonstrated a flagrant disregard for the laws of the United States as well as for the lives of the general public. For the reasons stated above, ICE has found that it would not be in the best interests of the general public to release you at this time.

Based on the above, you are to remain in ICE custody pending your removal from the United States. You are advised that you must demonstrate that you are making reasonable efforts to comply with the order of removal, and that you are cooperating with ICE's efforts to remove you by taking whatever actions ICE requests to effect your removal. You are also advised that any willful failure or refusal on your part to make timely application in good faith for travel or other documents necessary for your departure, or any conspiracy or actions to prevent your removal or obstruct the issuance of a travel document, may subject you to criminal prosecution under 8 USC Section 1253(a).

If you have not been released or removed from the United States by April 14, 2008, jurisdiction of the custody decision in your case will be transferred to the Headquarters Custody Determination Unit (HQCDU), 801 I St. NW, Washington, DC 20536. HQCDU will make a final determination regarding your custody.



Signature and Title of Deciding Official1/23/8

Date

1 KAREN P. HEWITT
United States Attorney
2 RAVEN M. NORRIS
Assistant U.S. Attorney
3 California State Bar No. 232868
CAROLINE J. CLARK
4 Assistant U.S. Attorney
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EXHIBIT P



U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement
Office of the Field Director

*Detention and Removal Operations
880 Front Street, Suite 2242
San Diego, California 92101*

February 19, 2008

**MEMORANDUM FOR MICHAEL BERMAN
HEADQUARTERS DETENTION AND REMOVAL
TRAVEL DOCUMENT UNIT**

FROM: Robin F. Baker
Field Officer Director
San Diego, CA

Robin F. Baker

**Subject: Travel Document Acquisition for Detained Alien
CAO, Sui Huan A#38 494 554**

This request for assistance in obtaining an alien travel document for removal from the United States is being prepared and forwarded to your office for action. CAO is in service custody at the Otay Detention Facility, San Diego, California, and was ordered removed from the United States to Peoples Republic of China on October 12, 1995.

On November 28, 2007 the Service has formally requested this issuance of a travel document from the Consulate General of China in Los Angeles, CA to effect the removal of CAO from the United States. On February 1, 2008 a phone inquiry and fax transmittal was sent to Consulate Official Zhang regarding the travel document acquisition. On February 21, 2008 another voice message was left and a fax was sent to the consul general office.

Submission of this request to your office is being made in hopes that it can be elevated to the Headquarters level for further action. Please find attached copies of our cover letter to the Consulate General of China, completed passport application, Record of Deportable Alien (I-213), Order To Show Cause and Notice of Hearing (I-221), Order of the Immigration Judge, copy of fax transmittals and a copy of DHL tracking receipt from original travel document request that was sent to the consulate office.

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7 Attorneys for Defendants

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 14 Department of Homeland Security;
 15 MICHAEL MUKASEY, Attorney General;
 16 ROBIN F. BAKER, Director of San Diego
 Field Office; U.S. Immigration and
 Customs Enforcement; JOHN A. GARZON,
 17 Officer-in-Charge,

18 Respondents.)

Case No. 08cv0511-DMS (BLM)

DECLARATION OF ERIC SALDANA

19 DECLARATION OF ERIC SALDANA

20 I, Eric Saldana, do hereby declare and say:

21 1. I am employed by the U.S. Department of Homeland Security (DHS), Immigration and
 22 Customs Enforcement (ICE), in Los Angeles Field Office, as the Assistant Field Office Director. I have
 23 held this position since August 2007. Prior to this position I held various positions with ICE and the
 24 legacy Immigration and Naturalization Service (INS) since 1996.


25 2. Since December 2007, I have been the ICE point of contact for the Chinese Consulate in Los
 26 Angeles. As the point of contact, I regularly communicate with consular officials regarding the
 27 repatriation of Chinese nationals in ICE custody. I am familiar with the process for repatriating
 28 Chinese nationals.

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3. On April 18, 2008, I met with an official from the Chinese Consulate in Los Angeles. We discussed the status of ICE's request for travel documents for Sui Huan Cao, A38 494 554. The consular official informed me that the request was still pending but that the Consulate was hesitant to issue the travel documents because of humanitarian factors relating to Mr. Cao.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed this 28 day of April 2008.


Eric Saldana
Assistant Field Office Director
Los Angeles Field Office

1 KAREN P. HEWITT
United States Attorney
2 RAVEN M. NORRIS
Assistant U.S. Attorney
3 California State Bar No. 232868
CAROLINE J. CLARK
4 Assistant U.S. Attorney
California State Bar No. 220000
5 United States Attorney's Office
880 Front Street, Room 6293
6 San Diego, California 92101-8893
Telephone: (619) 557-7157/7491
7 Facsimile: (619) 557-5004

8 Attorneys for Respondents

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SUI HUAN CAO,) Case No. 08cv0511-DMS (BLM)

12)
Petitioner,)

13)
v.)

14) EXHIBIT R

14 MICHAEL CHERTOFF, Secretary of the)
Department of Homeland Security; MICHAEL)
15 MUKASEY, Attorney General; ROBIN F.)
BAKER, Director of San Diego Field Office;)
16 U.S. Immigration and Customs Enforcement;)
JOHN A. GARZON, Officer-in-Charge,)

17)
Respondents)
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EXHIBIT R

FILED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KININE KIM,

CASE NO. 02CV1524-J (LAB)
A25-289-140

v.

Petitioner,

ORDER GRANTING MOTION
FOR RECONSIDERATION

JOHN ASHCROFT, ET AL.

Respondents.

On August 5, 2002, Petitioner Kinine Kim, represented by counsel, filed his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. He challenged his custody by the Immigration and Naturalization Services ("INS") alleging that he has been indefinitely detained in violation of 8 U.S.C. § 1231(a)(6) and sought release from custody under the conditions of supervision set out in 8 U.S.C. § 1231(a)(3). The Court initially denied the Petition without prejudice as to refile and later granted the refiled Petition and ordered that Petitioner be released on bond. Respondent timely filed its Motion to Alter or Amend the Judgment pursuant to Rule 59(a), (e). For the reasons set forth below, the Motion is granted, the renewed Petition for Writ of Habeas Corpus is denied and Respondent may continue to detain Petitioner. The Court grants Petitioner leave to refile his petition in six months if he has not been removed at that time and is able to plead facts sufficient to satisfy *Zadvydas v. Davis*,

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02cv1524-J (LAB)

1 533 U.S. 678 (2001).

2 *Background¹*

3 Petitioner is a Cambodian national and refugee from Thailand who became a permanent
4 resident on February 10, 1983. The state of California convicted him of assault with a firearm
5 upon a person in violation of the California Penal Code § 245A(2); second degree burglary in
6 violation of California Penal Code § 459; and driving with a suspended/revoked driver's
7 license and failing to pay the \$792 fine. When he filed his Petition on August 5, 2002, he had
8 been in the custody of the Immigration and Naturalization Service ("INS") since November
9 19, 2001 and had been the subject of a final order of removal since January 17, 2002.
10 Petitioner's January 22, 2002 request for a travel document from the Cambodian government
11 was denied on January 25, 2002. The Cambodian government denied the application because
12 it had no repatriation agreement with the United States. On March 22, 2002, the United States
13 and the Cambodian government signed a "Memorandum Between the Government of the
14 United States and the Royal Government of Cambodia for the Establishment and Operation
15 of a United States-Cambodia Joint Commission on Repatriation," (hereinafter
16 "Memorandum"), providing procedures for the repatriation of each other's nationals to their
17 home state. After the Memorandum was signed, Petitioner filed a new application for travel
18 documents on April 8, 2002. He was interviewed by Cambodian officials in early October
19 2002. At the time Petitioner filed, the Cambodian government had not decided whether to
20 repatriate him.

21 In its Answer to the Petition, Respondent requested a stay of the proceedings pending
22 the INS' review of Petitioner's circumstances to determine if there was a significant likelihood
23 of removal in the reasonably foreseeable future pursuant to interim rules that have since been
24 codified at 8 C.F.R. § 241.13. The Court found that although the six month period during
25 which detention is presumptively reasonable had passed, that Petitioner had not met his burden
26 of showing good reason why there is no significant likelihood of removal in the reasonably

27 _____
28 ¹ These facts are set forth in the Court's Order Denying Petition Without Prejudice and
are reiterated here for convenience.

1 foreseeable future. The Court denied the Petition without prejudice as to refiling if, within 45
2 days, the Government of Cambodia had not responded or had denied repatriation.

3 Petitioner renewed his Petition after the 45 days had passed. This time, the Court
4 granted the Petition, stating that although the United States and Cambodian governments were
5 cooperating to repatriate Cambodian nationals detained by the INS, that

6 Respondent ha[d] not made a sufficiently strong showing that Petitioner's
7 repatriation [was] likely in the foreseeable future given that Petitioner ha[d] been
8 in INS custody since November 19, 2001 and that his order of removal ha[d]
been final since January 17, 2002.

9 *Order Granting Petition for Writ of Habeas Corpus* (March 3, 2003) at 2.

10 Respondent raises two distinct but related issues, contending that the Court
11 impermissibly shifted the burden of proof to the Respondent and that application of the correct
12 standard requires that the Petition be denied because "the passage of time alone is not
13 sufficient to require the release of an alien detainee." *Mem. of P & A.* at 2. According to
14 Respondent, the burden remains with the alien to *prove* that his removal is not significantly
15 likely in the foreseeable future." *Id.* (emphasis added). The Court acknowledges that its March
16 3, 2003 Order imprecisely recited the standard, but disagrees with Respondent's contentions
17 that the alien must *prove* that removal is not significantly likely in the foreseeable future and
18 that the length of detention alone is always insufficient to show that there is good reason to
19 conclude that there is no significant likelihood of removal in the reasonably foreseeable future.
20 The Court nonetheless agrees with Respondent that continued detention is authorized under
21 *Zadvydas*.

22 *Discussion*

23 The Attorney General has the discretion to arrest and detain certain classes of aliens,
24 including those who like Petitioner, who are removable because they have been convicted of
25 specified crimes, pending a decision on whether the alien is to be removed from the United
26 States. 8.U.S.C. § 1226(a)(2), (c). Generally, an alien must be removed within 90 days of an
27 issuance of a final order of removal. 8 U.S.C. § 1231(a)(1). However, "under no circumstance
28 during the removal period" shall the Attorney General release an alien who has been found

1 inadmissible because he has committed certain crimes specified and defined in sections
2 1182(a)(2), (3) or section 1227(a)(2), (a)(4)(B). 8 U.S.C. § 1231(a)(2). In *Zadvydas v. Davis*,
3 533 U.S. 678 (2001), the United States Supreme Court rejected the Government's argument
4 that section 1226(a)(2) authorized indefinite detention and read into the section as implicitly
5 limiting an alien's post-removal period detention to a period reasonably necessary to bring
6 about that alien's removal from the United States. *Id.* at 690.

7 Contrary to Respondent's argument, *Zadvydas* does not impose on the alien the burden
8 of *proving* that his removal is not significantly likely in the foreseeable future. Rather,
9 *Zadvydas* creates a burden-shifting procedure setting forth the burdens of proof for when
10 removal is reasonably foreseeable. Once the presumptively reasonable six-month period of
11 detention has expired, the alien must "provide [] good reason to believe that there is no
12 significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701; *Xi v. United*
13 *States I.N.S.*, 298 F.3d 832, 840 (9th Cir. 2002). *Zadvydas* thus sets forth what the alien must
14 plead and does not impose an evidentiary burden. *Fahim v. Ashcroft*, 227 F. Supp.2d 1359
15 (2002)(holding that petitioner did not allege a significant likelihood that his removal is unlikely
16 in the foreseeable future). Once the alien has provided "good reason," the Respondent "must
17 respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701; *Xi*, 298
18 F.3d at 840. The burden is therefore on Respondent to produce admissible, credible evidence
19 concerning the likelihood of removal in the foreseeable future. While the Court did not
20 specifically define "reasonably foreseeable future," it did set some parameters that guide our
21 understanding of the phrase. The alien must allege something more than that there is no
22 pending repatriation agreement and must consider the likelihood of successful future
23 negotiations, but the alien does not have to show "the absence of *any* prospect of removal."
24 *Id.* at 702 (emphasis in original).

25 The original Petition alleged that Petitioner had been in custody for longer than the
26 presumptively reasonable six month period and that it was not certain that he would be
27 removed in the reasonably foreseeable future because the Cambodian government had denied
28 travel documents for Cambodian detainees in San Diego because they, like Petitioner, were

1 born in Thailand, and because Cambodian government officials had informed Petitioner during
2 his interview that he was not likely to receive travel documents because he was born in
3 Thailand. The Petitioner lodged documents showing that the other Cambodians were denied
4 travel documents for reasons other than those alleged by Petitioner, and the Court found that
5 the alleged statements by the Cambodian government officials were inadmissible hearsay.
6 Respondent produced evidence showing that the United States and Cambodian governments
7 were making progress in arranging for the repatriation of Cambodian nationals. Specifically,
8 the two countries had entered into the Memorandum on March 22, 2002. Moreover, Petitioner
9 had been interviewed by Cambodian government officials. The Memorandum had already
10 resulted in the removal of a number of Cambodian nationals. Thus, there were no institutional
11 barriers to repatriation.

12 The Court denied the original Petition subject to renewal because "Petitioner has not
13 shown good reason why there is no significant likelihood of removal in the reasonably
14 foreseeable future." *Order Denying Petition for Writ of Habeas Corpus* (Dec. 6, 2002) at 5.
15 The amended Petition, filed on February 4, 2003, alleged that the Cambodian government had
16 still not responded to Respondent's request for travel documents for the Petitioner and that
17 Petitioner remained in custody. In other words, Petitioner argued that the passage of time alone
18 demonstrated that Respondents were not able to effectuate his repatriation in the reasonably
19 foreseeable future.

20 In response to Petitioner's allegations in the amended Petition, Respondent filed an
21 amended Return and new evidence in the form of a declaration by an INS official stating that
22 two additional groups of Cambodians had in fact been repatriated since the original Return was
23 filed. Respondent argued that the renewed Petition should be denied because "the process is
24 functioning and . . . there is [no] evidence that Petitioners in particular have been rejected by
25 the Cambodian government." *Amended Return* at 4. In a footnote, Respondent stated that
26 another flight had been scheduled to Cambodia, "demonstrating that the March 22, 2002
27 memorandum is producing significant results in terms of an established removal process." *Id.*
28 n. 4.

1 In *Fahim v. Ashcroft*, 227 F. Supp.2d 1359 (2002), another district court held that the
2 petitioner had not met his burden of alleging a significant likelihood that his removal is
3 unlikely in the foreseeable future. The facts of that case are strikingly similar to those here.
4 The petitioner "relie[d] on the bare fact that the Egyptian consulate ha[d] not yet issued any
5 travel documents for him despite the efforts of the INS to secure them" and on his family's
6 statement that the Egyptian consulate had not responded to their inquiries. *Id.* at 1365. The
7 petitioner alleged "that it is unknown whether the Egyptian government will ever issue the
8 requested travel documents." *Id.* The district court found that those bare allegations were
9 speculative and insufficient because they did not include allegations of institutional or
10 individual barriers to repatriation. Evidence showed that Egypt was in fact repatriating
11 nationals and "the lack of visible progress since the INS requested travel documents from the
12 Egyptian government" was not sufficient to show no significant likelihood of removal in the
13 foreseeable future.

14 In reaching its conclusion, the *Fahim* court relied heavily on the rationale set forth in
15 an opinion issued from this district. See *Khan v. Fasano*, 194 F. Supp.2d 1134 (S.D. Cal.
16 2001)(Keep, J.). *Khan* held that new information presented in support of a motion for
17 reconsideration showed that progress was being made for the petitioner's deportation and that
18 institutional barriers were therefore not present. *Id.* at 1136. The court rejected petitioner's
19 argument that the lack of visible progress showed that there are individual barriers. In the
20 court's view, the lack of visible progress "simply show[ed] that the bureaucratic gears of the
21 INS are slowly grinding away. Progress, however slow, is being made on his individual case:
22 travel documents have been requested and there is scheduled a meeting with the Pakistani
23 Consulate to discuss [petitioner's] status." *Id.* at 1137. The court also noted that the newly-
24 formed HQPDU, as a specialized unit within the INS, was entitled to significant deference
25 from the judiciary." *Id.*

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1 Both the *Khan* and *Fahim* courts contrasted the facts of their cases with those of the
2 petitioners in *Zadvydas*. In *Zadvydas*, the Supreme Court addressed a situation where the
3 petitioners were nationals of countries with which the United States had no repatriation
4 agreement and the petitioners "faced detention that appeared to be 'indefinite and potentially
5 permanent.'" *Khan*, 194 F. Supp.2d at 1136; *Fahim*, 227 F. Supp.2d at 1366. There was,
6 therefore, "virtually no hope of repatriating [them] back to [their] native land[s]." *Fahim*, 227
7 F. Supp.2d at 1366.

8 This Court agrees with the *Khan* and *Fahim* courts that evidence of progress, albeit slow
9 progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's
10 detention grows unreasonably lengthy.² At some point in time, however, lengthy detention
11 demands almost immediate repatriation or release on bond. What "counts as the 'reasonably
12 foreseeable future'" shrinks as the period of prior postremoval confinement grows. *Zadvydas*,
13 533 U.S. at 401. While the Court is unable to say precisely when detention becomes
14 unreasonably lengthy given the degree of certainty regarding removal, the Court is confident
15 that Petitioner's detention has not yet reached that point. Petitioner has been in custody
16 following his state prison sentence since November 19, 2001, or approximately one year and
17 four months at the time the Court granted the Petition. Petitioner's one year and four month
18 detention does not violate *Zadvydas* given Respondent's production of evidence showing that
19 the United States and Cambodian governments' negotiations are in progress and there is,
20 therefore, reason to believe that removal is likely in the foreseeable future.

21 Conclusion

22 For the reasons set forth below, the Motion for Reconsideration is GRANTED, the
23 renewed Petition for Writ of Habeas Corpus is DENIED and Respondent may continue to
24 detain Petitioner. The Court grants Petitioner leave to refile his petition six months from the
25

26 ² The Court notes that the *Khan* court concluded that the petitioner had failed to meet his
27 burden of providing good reason to believe that there is no significant likelihood of removal in the
28 reasonably foreseeable future. *Khan*, 194 F. Supp.2d at 1137. This Court believes that conclusion
misstates the petitioner's burden, which is one of pleading not of proving.

1 date stamped "Filed" on this Order if he has not been removed at that time and is able to plead
2 facts sufficient to satisfy *Zadvydas v. Davis*, 533 U.S. 678 (2001).

3 **IT IS SO ORDERED.**

4 DATED: June 2, 2003

5 
6 **NAPOLEON A. JONES, JR.**
United States District Judge

7 cc: All Parties

8 Robert Plaxico
9 Office of the United States Attorney
Federal Office Building
10 880 Front Street room 6293
San Diego California 92101-8893